



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON DC 20370-5100

BJG  
Docket No: 305-00  
4 February 2000

MR [REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 3 February 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps Performance Evaluation Review Board (PERB), dated 4 January 2000, a copy of which is attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the report of the PERB. They were unable to find that the incidents cited in the contested fitness report did not occur. They could find no requirement for the Government to produce documentation to prove that the report is accurate. In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records.

Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director

Enclosure



DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS  
3280 RUSSELL ROAD  
QUANTICO, VIRGINIA 22134-5103

305-00

IN REPLY REFER TO:  
1610  
MMER/PERB  
4 JAN 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)  
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF  
FORMER MARINE CAPT [REDACTED]

Ref: (a) Mr. [REDACTED] Form 149 of 21 Jul 99  
(b) MCO P1610.7D w/Ch 1  
(c) MCO 5300.12A (Substance Abuse Program)

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 28 December 1999 to consider [REDACTED]' request contained in reference (a). Removal of the fitness report for the period 951101 to 960901 (EN) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends that the fitness report fails to comply with the provisions of reference (b) in two areas. First, he believes the Reporting Senior's comments referring to "alcohol-related incidents" violates paragraph 1206 of reference (c). Second, the petitioner states that the failure to be shown the Reviewing Officer's comments is contrary to the provisions of paragraph 5004 of reference (b). To support his appeal, the petitioner furnishes his own statement.

3. In its proceedings, the PERB concluded that the report is both administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. Contrary to the petitioner's arguments and beliefs, the report does not violate any provisions of reference (b). The Reviewing Officer did not, as the petitioner contends, add any new or additional adverse material. Colonel [REDACTED] merely reaffirmed what Lieutenant Colonel [REDACTED] had reported. Consequently, the petitioner was correctly not required to acknowledge/respond to Colonel [REDACTED]'s comments.

b. Both reporting officials stated the petitioner was recommended for Level II alcohol abuse treatment. Per paragraph 3100 of reference (c), before a Marine can be recommended for Level II rehabilitation, a Drug and Alcohol Abuse Report (DAAR) must be completed. Part of completing that form is the screening by a physician or clinical psychologist of the member suspected

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FORMER MARINE CAPTAIN [REDACTED]

of alleged abuse. The form indicates current frequency of abuse, nature of the abuse, and how the abuse was discovered. It also reflects the member's willingness to counseling, education, and rehabilitation as indicated to the physician. If the member is not willing, he or she is not referred to Level II. Since both the Reporting Senior and Reviewing Officer said the petitioner was referred, the only assumption is that at the time of screening, the petitioner accepted rehabilitation. No evidence to the contrary is offered. Command referral is not something that is pursued lightly and the seriousness of such referral is hardly something the reporting officials would fabricate.

c. Contrary to the petitioner's contention, the reporting of a BAC level is only pertinent when referral is the result of a DWI/DUI. Nothing in the challenged fitness report refers to a DWI/DUI and there are certainly many other occasions that are indicative of alcohol abuse (i.e., "habitual tardiness", "appearance and presence...lacking" and "poor judgment" -- all recorded in the narrative portion of the fitness report).

d. The "personality conflict" with the Reporting Senior has not been documented or corroborated. Even if such a conflict did exist, that is not, in and of itself, grounds for invalidating a fitness report since it is the duty and responsibility of the junior to accommodate the requirements of the senior, unless and until the bounds of propriety are exceeded. There is no such showing in this case.

e. All of the issues the petitioner presents in reference (a) should have been surfaced when he acknowledged the adverse nature of the report more than three years ago. To do so at this juncture, when the argument is from a single perspective, and without any substantiating evidence, lacks both timeliness and credibility.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report should remain a part of [REDACTED] official military record.

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ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF  
FORMER MARINE [REDACTED] 4

5. The case is forwarded for final action.

[REDACTED]  
Colonel, U.S. Marine Corps  
Deputy Director  
Personnel Management Division  
Manpower and Reserve Affairs  
Department  
By direction of the Commandant  
of the Marine Corps